

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 9, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Mary Voelker  
Walter Tarmann  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Paul Schultz

**SECRETARY TO THE BOARD:** Amy A. Barrows

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Mark Winkels, BA03:061, petitioner  
Kristine Spinelli, BA03:059, owner  
Leroy & Marilyn Zimdars, BA03:022, petitioners  
Steven Spinelli, BA03:059, owner  
Todd Wozniak, BA97:001, petitioner  
Tim Benkowski, BA03:059, petitioner  
Al & Diana Hubing  
Greg Proudlove, BA03:049, petitioner  
Charles Luebke, BA03:062, petitioner  
Patty Luebke, BA03:062, petitioner  
Gayle Kugler, BA03:057, petitioner  
Adam Kugler, BA03:057, petitioner's son  
John Birno, BA03:057

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Ms. Voelker *I move we approve the Summary of the Meeting of June 11, 2003.*

The motion was seconded by Mr. Bartholomew. Ms. Voelker, Mr. Bartholomew and Mr. Ward voted yes. Mr. Tarmann and Mr. Dwyer abstained since they were not at the meeting of June 11, 2003.

**NEW BUSINESS:**

**BA03:022 LEROY ZIMDARS (Held in Abeyance from April 9, 2003 and April 23, 2003.)**

Ms. Voelker *I move we adjourn the meeting until September 10, 2003, as requested.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**BA03:058 MICHAEL ENGEL**

The proposal did not require variance approval, therefore, the petitioner withdrew his application.

**BA03:059 TIM BENKOWSKI**

Mr. Dwyer

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial for the following reasons:

The petitioner has failed to demonstrate that denial of this variance will result in an unnecessary hardship, which the Wisconsin Supreme Court has defined as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioner is proposing to remove the existing garage, which is extremely non-conforming to the offset requirements, and rebuild it in the same location and then further increase the size of the structure at the same extremely non-conforming offset distance, when a conforming location exists. Further, it is the intent of the Ordinance that non-conforming structures should be eliminated over time and, replacing and enlarging a non-conforming structure when a conforming location exists, would only serve to perpetuate the existence of the non-conforming structure and the non-conforming status of the property, which could for the most part be conforming. There are no physical limitations that exist, which requires the petitioner to obtain a variance from the offset provisions. The property is flat where a structure could be placed in a conforming location and the petitioners have approximately 32 ft. east of the residence to construct a garage. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

**BA03:060 DAVE & SHELLEY SHANKLIN**

Ms. Voelker

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report. The petitioner is permitted the ability to construct a new residence with the same footprint approved at this meeting and with the same conditions.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The retaining walls must not extend further than 22 ft. from the existing residence, or closer than 8 ft. from the platted road right-of-way. The retaining walls must be at least 5 ft. from the north and south lot lines.
- 2.) If a new stoop is proposed on the roadside of the residence, it must not be greater than 20 sq. ft. in area and the stairway must not exceed 4 ft. in width and must not extend closer to the road than the approved retaining walls.
- 3.) The first floor of the residence must not be raised any further than 2 ft., or an elevation of 895.1.

A soil boring must be taken at or near the house location and the results submitted to the Planning and Zoning Division staff for review and approval. This is to ensure the foundation to be constructed will meet the groundwater clearance provision of the Ordinance.

- 4.) The proposed additions to the residence must not extend any closer to the north, west, and south lot lines than the existing residence. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines as the overhangs exceed two (2) ft. in width.
- 5.) Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
- 6.) Prior to the issuance of a zoning permit, the Town of Summit Town Board and Town Plan Commission must approve the location of the retaining walls and any proposed stairway partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.
- 7.) A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the shed is located within a platted alley and if, in the future, any portion of the shed should interfere with necessary public or alley improvements, that portion of the shed must be removed at the owner's expense. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.
- 8.) Prior to the issuance of a zoning permit, a plat of survey showing the location of the proposed addition, retaining walls, and any other appurtenances, including stoops and stairways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 9.) Prior to the issuance of a zoning permit, a complete set of floor and elevation plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 10.) In order to ensure the construction of the foundation and addition to the residence, as well as the retaining walls, does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioners' request, with the recommended conditions, will allow the petitioners reasonable use of their property. Currently, the petitioners are living in an unsafe and unhealthy environment. The existing concrete slab below the residence is settling and the first floor of the residence is uneven and slopes from the roadside of the residence uphill towards the back of the residence. The petitioners should be permitted additional floor area to obtain reasonable use, since they don't currently meet the minimum floor area and they are not asking to exceed the minimum floor area, in fact, will still be below the minimum floor area requirements. Allowing the basement would allow the petitioners some storage area for miscellaneous items, since they will not be permitted a garage and do not have room for a garage on their property. Both adjacent properties have basements, therefore, the request would not negatively impact, but rather meet the general desirability of the neighborhood. The property is extremely non-conforming in size and no reasonably sized structure could be constructed on the property without a variance. A new residence could not be constructed, which could be located in a significantly more conforming location, therefore, requiring the petitioners to move the location of their residence would be unreasonable and a relocated residence could not conform to the Ordinance requirements. In addition, the retaining walls would allow the petitioners a place to park other than directly on the existing road. The Town of Summit should determine, however, if the walls impact their future plans for improvements to Lindy Lane. Therefore, granting the requested variance with the recommended conditions would be in conformance with the purpose and intent of the Ordinance.

**BA03:061 MARK & JUDY WINKELS**

Mr. Dwyer

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial for the following reasons:

The petitioners have failed to demonstrate that denial of this variance will result in an unnecessary hardship, which the Wisconsin Supreme Court has defined as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioners currently have reasonable use with the existing 2,082 sq. ft. residence, 56 sq. ft. covered porch, and 528 sq. ft. attached garage. If the applicants feel it is necessary to increase the size of their home, there are alternative locations to construct an addition, which would not require any variances at all. There are no unique physical conditions existing on the property. In fact, the property is very flat topographically and there is an area to the south that could be used for an addition to the residence. In addition, the variance request would harm the public interest and affect the general public interest/welfare, not necessarily lack of local opposition, since the property and all structures on the property are currently in conformance with our Ordinance. To permit the petitioners the ability to exceed the Ordinance requirements when they have a very reasonably sized residence currently, which meets the Ordinance requirements, would not be in the best interest of the public. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

**BA03:057 GAYLE R. KUGLER**

Mr. Tarmann

*I make a motion to hold the hearing in abeyance until July 23, 2003, to allow the Plan Commission to act on the request to reduce the road right-of-way. Staff should investigate any possible extension to the west of the existing road.*

*Mr. Dwyer and Ms. Voelker will not be able to attend the meeting of July 23, 2003, but would like the Board to consider approval of the requested addition, if the petitioners remove the existing garage. Ms. Voelker added that she would go along with what the Town is requesting the road size be.*

The motion was seconded by Mr. Ward and carried with 4 yes votes. Mr. Bartholomew voted no.

The staff's recommendation was for denial with the following reasons:

The petitioner has failed to demonstrate that denial of this variance will result in an unnecessary hardship, which the Wisconsin Supreme Court has defined as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioners currently have reasonable use with the existing 1,344 sq. ft. residence, 682 sq. ft. detached garage, and 682 sq. ft. boathouse. The petitioners currently have approximately 1,364 sq. ft. of storage area for vehicles, boats, and other miscellaneous items, and a sizable residence for habitation, when including the basement. Allowing a variance, to increase the non-conforming status of the existing structures on the property, would be exceeding reasonable use. The existing residence is only non-conforming to the road setback and only by approximately 2.5 ft, whereas the petitioner is proposing a 32.5 ft. road setback encroachment, increasing the non-conformity of the structure greatly. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

**BA03:062 CHARLES & PATRICIA LUEBKE**

Mr. Bartholomew

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following modifications to the conditions stated in the Staff Report: The 20 ft. x. 24 ft. dimension shall be removed from Condition No. 1 and the following sentence, "The Town of Merton Engineer must approve the grading and drainage plan, prior to the issuance of any permits, to ensure drainage will not negatively impact the road", in Condition No. 10 shall be removed. The reasons for approval shall be the same as stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The detached garage shall not exceed 20 ft. x. 24 ft., 480 sq. ft., in size. The 80 sq. ft. shed must be removed from the property upon completion of the detached garage. The poly-structure must be removed from the property prior to issuance of a zoning permit for the garage and not later than August 1, 2003, unless authorized by the issuance of a Conditional Use Permit and any other necessary permits. (The floor area ratio would be 16.3% or 13%, if the road right-of-way were reduced.) (The accessory building floor area ratio would be 8.3% or 6.6%, if the road right-of-way were reduced.)

- 2.) The detached garage shall be located at least 9.85 ft. from the west property line and 7 ft. from the north property line. The garage shall be located 5 ft. from the 50 ft. platted road right-of-way on the south side of the parcel. The garage shall be at least 15 ft. from the 50 ft. platted road right-of-way on the east side of the parcel. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and road setback as the overhangs exceed two (2) ft. in width.
- 3.) The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
- 4.) A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating the two substandard lots of record shall not be sold separately until or unless this condition is modified by the Waukesha County Board of Adjustment or its successor. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff. In lieu of this requirement, the lots may be combined by a Certified Survey Map. The Certified Survey Map would need to be approved by the Town of Merton and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.
- 5.) If the road is not reduced to 50 ft. in width, a Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the garage is located partially within the established road right-of-way and if, in the future, any portion of the garage should interfere with necessary road improvements, that portion of the garage must be removed at the owner's expense. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff. Prior to the issuance of a zoning permit, the Town Board must approve the location of the garage partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.
- 6.) The floor of the garage must be at least one (1) ft. above the 100-year floodplain elevation, per NR 116, Wisconsin Administrative Code, 900.9 ft. amsl.
- 7.) A Preliminary Site Evaluation of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
- 8.) Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 9.) Prior to the issuance of a zoning permit, a stake-out survey showing the location of the detached garage and all other existing structures, in conformance with the above conditions, must be

prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

- 10.) In order to ensure the construction of a new detached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. **The Town of Merton Engineer must approve the grading and drainage plan, prior to the issuance of any permits, to ensure drainage will not negatively impact the road.** The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 9.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the above request, with the recommended conditions, will allow the petitioners additional storage compatible with the development in the surrounding area. The proposed garage and existing garage would give the petitioners 832 sq. ft. of storage area, which is a generous relief from the requirements. The petitioners do have a small cottage with no basement and storage should be provided on the property. If the proposed garage were any larger than the size recommended by staff, the adjacent properties to the north and west would suffer from encroachment and the structure could negatively impact the safety and efficiency of passing traffic, since the garage would be constructed on the northwest side of an intersection, located in a floodplain. In addition, the floor of the garage must be at least one (1) foot above the floodplain elevation and enough area should be preserved as open space on the small parcel to allow the fill to be placed on the property without negatively draining on the neighboring properties or the road. Therefore, approving the garage, as conditioned, would allow the petitioners reasonable use and still maintain the general desirability of the neighborhood and, therefore, the proposal with the recommended conditions, is within the spirit and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA03:049 GREG & JAYNE PROUDLOVE**

Ms. Voelker

I make a motion to re-confirm our decision of BA03:049 for denial, dated June 25, 2003, for the reasons, as stated in the "Memorandum" by staff, dated July 9, 2003.

The motion was seconded by Mr. Ward with three (3) yes votes. Mr. Tarmann and Mr. Dwyer abstained, since they were not at the meeting of June 25, 2003.

##### **BA97:001 TODD WOZNIAK**

The Board suggested the petitioner apply for a special exception from the Waukesha County Board of Adjustment or submit a detailed map showing a revised 70 ft. x. 70 ft. building envelope for the next Board of Adjustment meeting and the Board would reconsider the new building envelope under old business.

**ELECTION OF NEW BOARD OF ADJUSTMENT VICE-CHAIRMAN:**

No voting was conducted at this meeting.

**ADJOURNMENT:**

Ms. Voelker

*I move we adjourn this meeting at 10:10 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Amy A. Barrows  
Secretary, Board of Adjustment